

**United States Court of Appeals**  
**For the Ninth Circuit**

---

RICHARD H. CLINTON, *Appellant*,

vs.

UNITED STATES OF AMERICA, *Appellee*.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

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**BRIEF OF APPELLEE**

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United States Attorney,

FRANCIS N. CUSHMAN,  
Assistant United States Attorney,  
*Proctors for Appellee United  
States of America.*

BOGLE, BOGLE & GATES,  
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Seattle 4, Washington.

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**United States Court of Appeals  
For the Ninth Circuit**

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|---------------------------|-------------------|---|-----------|
| RICHARD H. CLINTON,       | <i>Appellant,</i> | } | No. 15705 |
| vs.                       |                   |   |           |
| UNITED STATES OF AMERICA, | <i>Appellee.</i>  |   |           |

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
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**BRIEF OF APPELLEE**

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**STATEMENT OF THE CASE**

In his statement of the case the appellant has adopted a portion of the Findings of Fact entered by the Court and has added thereto a summary of his argument to the Trial Court based on his alleged right to a recovery under the terms of the Vocational Rehabilitation Act (29 U.S.C.A. §31, *et seq.*) For its counter-statement of the case, the appellee wishes to adopt by reference herein the Findings of Fact of the Trial Court. For convenience to this Court, these findings may be summarized briefly as follows:

The libelant (appellant), while serving as an officer aboard the PLYMOUTH VICTORY, sustained certain injuries on March 18, 1945. The vessel at the time was operated by Lykes Bros. Steamship Company under a General Agency Agreement with the then War Shipping Administration. The libelant procured competent counsel through whom he made claim for maintenance

and who, on his behalf, filed suit against the Government. On January 6, 1947, while this action was pending, a compromise and settlement of the libelant's claim was effected between his attorney and attorneys representing the appellee. The libelant and his attorney executed a Receipt and Release in return for payment to the libelant of the sum of \$4,962.60, and the libelant's suit was dismissed with prejudice. The appellant, after an interval of 8 years, instituted this suit to have the release set aside, for maintenance and cure, and for other relief. The Trial Court found that the Receipt and Release discharged the appellee's obligation to furnish maintenance and cure to the appellant, the release having been signed by the appellant when he was mentally competent and while represented by competent counsel. The Trial Court found that there was no fraud, duress or economic need which influenced the appellant to sign this release and thereupon concluded as a matter of law that the appellant was precluded from any recovery herein. As to libelant's claim under the Federal Vocational Rehabilitation Act, *supra*, the Trial Court found that it had no jurisdiction in Admiralty for such claim and therefore dismissed the same.

### SUMMARY OF ARGUMENT

Admiralty has no jurisdiction of claims arising under the Federal Vocational Rehabilitation Act, *supra*. There is no precedent for holding that such claims are of a maritime nature such as to give jurisdiction of the same to a court of admiralty.

In the absence of a finding by the Trial Court that fraud or duress were practiced upon libelant at the time



of signing the release or that he was "overreached," there is no justification for the setting aside of such a release which the appellant freely and voluntarily executed in return for value or consideration.

### ARGUMENT

#### **Vocational Rehabilitation Act Claim Properly Dismissed**

The popularly entitled Vocational Rehabilitation Act is to be found at 29 U.S.C.A. §31, *et seq.* This Act provides yearly grants-in-aid from the Federal Government to the State Governments "for the purpose of assisting the States in rehabilitating physically handicapped individuals so that they may prepare for and engage in remunerative employment to the extent of their capabilities, thereby not only increasing their social and economic well-being but also the productive capacity of the Nation" (29 U.S.C.A. §31). A careful review of this Act reveals that it deals only with the method of handling the grants, the computation of allotments to the various States, the duration and restriction of payments to the States, the criteria set up for establishment of the plans of the several States and general problems of administration of the Act. Nowhere in the Act is to be found a provision that any individual may make claim of any kind to the Federal Government either under an administrative procedure or in any court in the land, either Federal or State. Since this latter fact is so obviously patent in the Act itself there is no citation of authority to support this conclusion. It is clear from a reading of the Act that all contact by the person seeking vocational rehabilitation is made directly to the States as the States are designated in the Act

to be the agency to make proper disposition of the benefits provided by the Federal monies which are available.

The appellant has made what is perhaps a justifiable error in this phase of his argument by relying solely upon *Buch v. United States* (C.A. 2) 122 F.Supp. 25, 220 F.2d 165. In that case the injured seaman sustained what some of the medical experts described as a total and permanent disability as result of serious brain damage. The Trial Court stated in part (page 27):

“I accept the opinion of libelant’s neurologist that a re-educative rehabilitation is required—one that should have been undertaken earlier—before it can be said with reasonable certainty that libelant has reached the point of maximum possible cure.”

The Court then concluded in its finding that a period of rehabilitation was required which it is hoped would enable the libelant to use his right hand more adequately. This opinion and the above excerpt therefrom refer, of course, to physical and medical rehabilitation (customarily given at a Public Health Service facility) to gain use of an injured member. Nowhere in its opinion did the Trial Court refer to the Federal Vocational Rehabilitation Act, *supra*. On appeal, the Second Circuit also referred to a “future rehabilitation program” which was again a reference to the nature of the medical treatment which the expert witnesses described as being necessary. The Appellate Court did not refer to the Federal Vocational Rehabilitation Act, or grant any relief based on this Act.

The Federal Office of Vocational Rehabilitation has promulgated regulations wherein the State Agencies

are directed to assume the responsibility for the determination of the eligibility of the individuals applying for the Agency's services. The Code of Federal Regulations (45 C.F.R. §401.6) states as follows:

“The State Plan shall provide that, except as otherwise specifically indicated in this part with respect to war-disabled civilians and civilian employees of the United States disabled while in the performance of their duty, the State Agency will assume responsibility for the determination as to the eligibility of individuals for vocational rehabilitation, and as to the nature and scope of rehabilitation services to be provided to such individuals, and that this responsibility will not be delegated to any other agency or individual, not of the State Agency Staff.”

The pocket Title supplement of the Code of Federal Regulations (January 1, 1957, 45 C.F.R., §401.14) states:

“The State Plan shall describe the policies and methods which the State Agencies will follow in determining the eligibility for promulgation of rehabilitation services in each case.”

Nowhere in the Code of Federal Regulations or in the Vocational Rehabilitation Act, *supra*, itself is to be found any procedure for a claimant to appeal from a denial of eligibility by a State Agency, to any Federal administrative agency or to any court, either State or Federal. The libelant could not therefore set forth in his libel any statute or regulation giving this Court appellate review of a refusal of either the California Board, the Washington Board or the Federal Agency to provide him vocational rehabilitation. Obviously,

Federal legislation designed to give rehabilitation to men injured in industry, even if while at sea, is not a maritime matter and is not properly brought in an Admiralty Court.

### **No Grounds Established to Invalidate Release**

A review of the cases dealing with the problem of the validity of seamen's releases indicates that the great majority of cases reported are those in which the negotiations terminating in the purported release were between the seaman personally and the steamship company or its representatives. We have been unable to find any case in which a release was held to be invalid where in the execution of which the seaman was represented by counsel, as in the case at bar.

This Court reviewed the rules referable to the determination of the validity of a seaman's release in *Blake v. Chamberlin & Co.* (C.A. 9) 176 F.2d 511, 1949 AMC 1591. The Court referred to and approved the instructions given to the jury by the Trial Court on this question. These instructions required the jurors to determine whether the seaman had been fully advised of his rights under the Jones Act, whether he had been fully advised of his rights to future maintenance, and whether the settlement made was fair in all respects. Judge Stephens set out the instructions at length and then stated (page 513) :

“The instructions given the jury show clearly that it was apprised of the seaman's rights and we quote liberally from them in the margin. *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239; *United States v. Johnson*, 9 Cir., 160 F.2d 789, reversed on other grounds sub

nom., *Johnson v. United States*, 333 U.S. 46, 68 S.Ct. 391, 92 L.ed. 468.”

In the case at bar the libel fails to allege any of the above invalidating factors in the negotiations resulting in the release and further, the libelant himself sets forth the fact that he was at all times properly represented by counsel and that the settlement was accomplished between the attorneys representing libelant and attorneys representing respondent. In his trial memorandum (Aps. 30), the appellant states:

“Libelant admits that he had counsel. John Geisisness (sic), who advised him to take the settlement, and sign the release, and give notice that he did so, notwithstanding the fact that he was totally disabled and would be for an indefinite future time. Libelant admits that he signed the release without fraud, duress, need, distressed conditions which precipitated need of money settlement.”

This Court previously considered the validity of a seaman's release in *United States v. Johnson* (C.A. 9) 160 F.2d 789. Judge Orr set forth and followed the rule on the validity of releases as contained in *Garrett v. Moore-McCormack*, 317 U.S. 239, 63 S.Ct. 246, 87 L.ed. 239, wherein it is stated that the burden is upon the one who sets up the release to show that it was executed freely and without coercion or misunderstanding. Judge Orr then reviewed the facts in the case wherein it was clear that the seamen *was not represented by counsel and had not consulted an attorney* prior to his interview with the claims attorney for the insurance company, the latter a man of some many years' experi-



ence. Principally because of this fact and the seaman's lack of legal representation, this Court found that that particular release was invalid.

In *Stetson v. United States of America* (C.A. 9) 155 F.2d 359, this Court stated the rule that the Trial Court's findings should not be disturbed unless clearly erroneous. Judge Mathews stated:

“There is no merit in appellant's argument. The findings are supported by substantial evidence, are not clearly erroneous and hence should not be disturbed. The evidence did not warrant a finding that the release was executed without good and sufficient consideration. Upon the facts found, the Court correctly concluded that the release was valid, and that appellant was not entitled to recover any sum whatever of appellees or either of them.”

Lack of counsel was a substantial element in the invalidating of a release in *Thompson v. Coastal Oil Co.*, 119 F.Supp. 838, 221 F.2d 559 (C.A. 3), 352 U.S. 862. The United States Supreme Court *per curiam* opinion affirmed the Trial Court's finding that the seaman's lack of legal assistance contributed to the invalidity of the release.

In *Sitchon v. American Export Lines, Inc.* (C.A. 2) 113 F.2d 830, certiorari denied, 311 U.S. 705, 61 S.Ct. 171, 85 L.ed. 458, the seaman was represented by an attorney of his own choice and signed the release in question upon the advice of his counsel. The release was upheld, the Second Circuit Court of Appeals stating (p. 832):

“If such a settlement as the one in the case at bar is voidable, no release by a seaman could ever be

free from attack, if he subsequently discovered that his injuries were greater than he anticipated when executing the release.”

The Federal District Courts have followed the rules as set down in the *Garrett*, *Blake* and *Sitchon* cases, *supra*. In *McGraw v. States Steamship Company* (D.C. N.D. Cal. S.D.) 116 F.Supp. 446, Judge Harris acknowledged the burden placed upon the party pleading the release but in conclusion stated (page 447):

“In summation, both parties bargained at arm’s length, understood the transaction, made no effort to overreach and concluded their dealings with what both believed to be a fair settlement. Under these circumstances it is not proper for the court to set aside the release. *Johnson v. Andrus*, 6 Cir., 119 F.2d 287; *Blake v. W. R. Chamberlin & Co.*, 9 Cir., 176 F.2d 511; *Sitchon v. American Export Lines*, 2 Cir., 113 F.2d 830.”

Thus the above release was upheld even though the seaman was *not represented by counsel* and dealt only with the claims agent of the steamship company.

There being no transcript of the testimony at the trial available to this Court in the Record on Appeal, this Court can only affirm as correct the Trial Court’s findings of fact. In these findings the Trial Court stated that the release was read and understood by the appellant, was signed by him at a time when he was mentally competent, that he was then represented by competent counsel and that there was no fraud, duress or economic need which influenced the appellant to sign the release. Since these findings must be taken as correct for the purpose of this appeal, the appellee re-

spectfully submits that the foregoing authorities, when applied to the facts of this case, clearly indicate the correctness of the action of the Trial Court.

### CONCLUSION

The appellee respectfully submits that the Trial Court was correct in holding that an Admiralty Court has no jurisdiction of a claim under the Federal Vocational Rehabilitation Act and that the release voluntarily executed by the appellant, when at all times represented by counsel, was valid in all respects.

Appellee prays that the action of the Trial Court be affirmed.

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